

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

- 1) CRIMINAL APPLICATION NO. 4313 OF 2006.
- 2) CRIMINAL APPLICATION NO. 4314 OF 2006.
- 3) CRIMINAL APPLICATION NO. 4315 OF 2006.
- 4) CRIMINAL APPLICATION NO. 4316 OF 2006.
- AND
- 5) CRIMINAL APPLICATION NO. 4317 OF 2006.

Narbada Syntex Pvt.Ltd. ... Applicant.
(in all applications)
Versus.

Ajay Shah and others. ... Respondents.
(in all applications)

Shri A.M.Saraogi for the Applicant in all the applications.

Shri U.V.Nikam, A.P.P.for the Respondent-State in all the applications.

CORAM : ABHAY S.OKA, J.

DATED : 18th December, 2006.

P.C.:

1. Heard Shri Saraogi appearing for the Applicant in these applications. The Applications have been filed under section 378(4) of the Code of Criminal Procedure, 1973. The Applicant filed complaints against the 1st Respondent under section 138 of the Negotiable Instruments Act, 1881. The learned trial Judge by the impugned order has acquitted the 1st Respondent.

2. Since the facts of all these cases are more or less similar, I am referring to the facts of the case in Application No.4313 of 2006. In this case a complaint has been filed in respect of a cheque in the sum of Rs.50,000/- dated 26th February 2005 drawn in favour of the Applicant by the 1st Respondent. On 3rd June 2005

the said cheque was returned dishonoured by the bankers of the Applicant. On the basis of the dishonour of the said cheque, notice dated 6th June 2005 was issued to the 1st Respondent. The said notice was duly served to the 1st Respondent. The 1st Respondent replied to the said notice denying his liability.

3. It appears that this was the second occasion on which the cheque in question was deposited by the Applicant for encashment. The same cheque was dishonoured in February/March 2005 and the Applicant had issued a notice under section 138(b) of the said Act of 1881 to the 1st Respondent. The said notice was issued on 7th March 2005 to which there was a reply sent by the Advocate for the 1st Respondent denying the liability. The learned trial Judge found that the complaint was barred by limitation which was filed on the basis of the notice dated 3rd June 2005.

4. Shri Saraogi submitted that after the cheque was dishonoured on the first occasion, the 1st Respondent instructed the Applicant to redeposit the said cheque and on the basis of the said understanding/ agreement, the cheque was again deposited by the Applicant. I find that no such assertion has been made in the complaint. No such case has been made out in the Affidavit of examination-in-chief of the Applicant. Moreover to the 1st notice of dishonour, the 1st Respondent replied

through his Advocate and denied the liability.

5. The trial Court has relied upon the decision of the Apex court in the case of Premchand Vijay Kumar v/s. Yashpal Singh and another [(2005) 4 SCC page 417]. In paragraphs 12 to 15 the Apex Court has held thus:

"12. As noted in Sadanandan Bhadran case once a notice under clause (b) of section 138 of the Act is "received" by the drawer of the cheque, the payee or holder of the cheque forfeits his right to again present the cheque as cause of action has accrued when there was failure to pay the amount within the prescribed period and the period of limitation starts to run which cannot be stopped on any account.

13. Once of the indispensable factors to form the cause of action envisaged in Section 138 of the Act is contained in clause (b) of the proviso to that section. It involves the making of a demand by giving a notice in writing to the drawer of the cheque "within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid". If no such notice is given within the said period of 15 days, no cause of

action could have been created at all.

14. Thus, it is well settled that if dishonour of a cheque has once snowballed into a cause of action it is not permissible for a payee to create another cause of action with the same cheque.

15. In SIL Import, USA v. Exim Aides Silk Exporters it was held that the language used in Section 142 admits of no doubt that the Magistrate is forbidden from taking cognizance of the offence if the complaint was not filed within one month of the date on which the cause of action arose. Completion of the offence is the immediate forerunner of rising of the cause of action. In other words, cause of action would arise soon after completion of the offence and period of limitation for filing of the application starts running simultaneously." (Emphasis supplied).

6. Thus the case is squarely covered by the decision of the Apex Court in the case of Premchand Vijay Kumar (supra). No reason to interfere with the impugned order. Hence no case is made out for grant of leave.

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7. The Applications are rejected.

Judge.